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Supreme Court of the United States

OCTOBER TERM 1937

No. 167

CHARLES F. BLACKTON,

Petitioner,

vs.

AARON GORDON,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

RESPONDENT'S BRIEF ON THE MERITS

AARON GORDON,
JOHN W. OCKFORD,
Counsel for Respondent.

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STATEMENT OF THE CASE

On January 9, 1934, respondent, an attorney and counsellor at law of New Jersey, recovered a judgment in the First District Court of Jersey City for legal fees, against one Horace Findlay for $500.00 damages and $29.20 costs of suit (R., 7 & 8). On February 2, 1934 an order for an execution against the wages of Findlay, due and to become due to him from the Erie Railroad Company was granted and pursuant thereto a writ of execution was issued and served on the petitioner, the Superintendent of the Marine Department of the said Erie and Findlay's superior (R.,

8 & 10). The execution was returned to the Clerk of the Court with a stated refusal to honor it on the ground that Findlay was a seaman and his wages were exempt from attachment or arrestment under Section 601 of the United States Code. Thereafter suit was instituted by the plaintiff against the defendant Blackton pursuant to a New Jersey Statute making the agent of a corporation liable for failure or refusal to honor the execution.

Petitioner was Findlay's superior and the semi-monthly pay checks of Findlay passed through his hands. Findlay was a Captain on a tug-boat of the Erie which plied along the West bank of the Hudson River in the State of New Jersey, putting in from time to time for sundry purposes at Edgewater, Weehawken, Hoboken, Jersey City, all in New Jersey and at various points on the East bank of the Hudson River in New York City and also in Brooklyn on the East River. The Harbor Master of Hudson County testified that Jersey City, Hoboken, Bayonne, Weehawken and Edgewater are all separate ports (R., 13-16).

The debtor Findlay lived on shore, not on his boat, and reported daily at 4 P. M., finishing his work at midnight (R., 14). A judgment was obtained by respondent against petitioner on July 15, 1935 for $106.00, the amount then due under the Findlay execution and costs (R., 18). From this judgment the petitioner appealed to the New Jersey Supreme Court which Court in an opinion written by Justice Trenchard affirmed the judgment of the Court below. Thereafter the petitioner appealed from the judgment of affirmance by the New Jersey Supreme Court to the New Jersey Court of Errors and Appeals, which Court, in turn, affirmed the judgment of the New Jersey Supreme Court

for the reasons expressed in the opinion of Justice Trenchard. The opinion of the New Jersey Supreme Court is reported in 117 New Jersey Law 40 and that of the New Jersey Court of Errors and Appeals in 118 New Jersey Law 159. From the judgment of affirmance of the New Jersey Court of Errors and Appeals the petitioner, alleging divergent opinions in different States, petitioned this Court for a Writ of Certiorari to review the judgment of the New Jersey Court of Errors and Appeals, which petition was granted by Order filed on October 11, 1937.

Petitioner seeks review of the determination of the New Jersey Court of Errors and Appeals which held that Section 544 of Title 46 of the U. S. Code should be read in connection with and in limitation of Section 601, of the same Title.

Petitioner contends that Section 601 should be read alone and that Section 544 should be disregarded.

The question is whether a tug-boat captain, the Master of a vessel, engaged wholly in the coastwise trade, living on shore, working on an eight-hour shift, earning from $200.00 to $215.00 a month, being paid by check every two weeks, is entitled to an exemption from garnishee process issued at the instance of a judgment-creditor.

Respondent contends that Congress never intended to exempt wages so earned and paid from the levy of an execution and that Section 601 should be read not only in connection with Section 544, but also in the light of its history, judicial interpretation and rules of statutory construction.

ARGUMENT

I.

THE WAGES OF AN AMERICAN SEAMAN ENGAGED WHOLLY IN THE COASTWISE TRADE ARE NOT EXEMPT FROM GARNISHEE PROCEEDINGS.

The statute exempting a seaman's wages from execution (Sec. 601, Title 46, United States Code) does not apply to seamen in the coastwise trade (Sec. 544, Title 46, United States Code).

Section 601 reads as follows:

> "Attachment or arrestment of wages; support of seaman's wife. No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment shall bind the party making the same, except such allotments as are authorized by this chapter. This section shall apply to fishermen employed on fishing vessels as well as to seamen: Provided, that nothing contained in this or any preceding section shall interfere with the order by any court regarding the payment by any seaman of any part of his wages for the support and maintenance of his wife and minor children. (Mar. 4, 1915, c. 153, Sec. 12, 38 Stat. 1169.)"

Section 544 reads as follows:

> "Vessels in coastwise trade. None of the provisions of an Act entitled 'An Act to authorize the

> appointment of shipping commissioners by the several circuit courts of the United States to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen' shall apply to sail or steam vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific coasts, or in the lake-going trade touching at foreign ports or otherwise, or in the trade between the United States and the British North American possessions, or in any case where the seamen are by custom or agreement entitled to participate in the profits or result of a cruise, or voyage. (June 9, 1874, c. 260, 18 Stat. 64.)"

It will be observed that Sec. 601 grants an exemption to seamen; and it will also be observed that Sec. 544 deprives seamen engaged in coastwise trade of the exemption.

Respondent understands petitioner's contention to be that, although by the adoption of the Code, Congress did not intend to enact new law or repeal existing law, there was no limitation upon Section 601 either by Section 544 or otherwise.

Respondent, however, will argue that Section 601 is limited and does not apply to coastwise shipping both because of Section 544 and also because this Court held the intention was clear in the original enactment and it never was intended to exempt from execution the wages of coastwise seamen.

U. S. v. *The Grace Lothrop,* 95 U. S. 527, 532.

In order to reach a legal conclusion upon this point it is necessary to examine all the statutory enactments and

their judicial interpretation which led up to Sections 601 and 544 of the Code, as above quoted.

On June 7, 1872, Congress passed an Act entitled:

> "An Act to authorize the appointment of Shipping Commissioners by the several courts of the United States, to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen."

The Act contained 68 sections and in many specified particulars regulated the employment, wages, treatment and protection of seamen. Section 61 of the Act read as follows:

> "That no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court; and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of such wages, or of any attachment, incumbrance, or arrestment thereon; and no assignment or sale of such wages, or of salvage made prior to the accruing thereof, shall bind the party making the same, except such advanced securities as are provided for in this act."

On June 9, 1874, Congress passed an Act entitled:

> "In reference to the operations of the Shipping Commissioners Act, approved June 7th, 1872."

This Act provided as follows:

> "That none of the provisions of an act entitled 'An act to authorize the appointment of shipping commissioners by the several Circuit Courts of the

> United States to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen' shall apply to sail or steam vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific Coasts, or in the lake going trade between the United States and the British North American possessions, or in any case where the seamen are by custom or agreement entitled to participate in the profits or results of a cruise, or voyage."

The enactment of the Act of June 9, 1874 was interpreted by this Court in

> *United States* v. *The Grace Lothrop*, 95 U. S. 527, 532

to be an explicit declaration of Congressional intention in connection with the enactment of the Act of June 7, 1872, namely,

> "* * * *the language of the Act is in terms an explicit declaration that Congress never intended that the original Act should apply to vessels engaged in any part of the coasting trade except that between the Atlantic and Pacific Coasts.*" (Italics ours.)

On June 22, 1874, the revision of the Federal statutes became effective and Section 61 of the Act of June 7, 1872, without substantial change, became Section 4536 of the Revised Statutes in the following language:

> "No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court; and every payment of wages to a seaman or apprentice shall be valid in law, not-

> withstanding any previous sale or assignment of wages, or of any attachment, incumbrance, or arrestment thereon; and no assignment or sale of wages, or salvage, made prior to the accruing thereof, shall bind the party making the same, except such advance securities as are authorized by this Title."

with the limitation thereon contained in Section 5601 of the said Revised Statutes, which reads as follows:

> "The enactment of the said revisions is not to affect or repeal any act of Congress passed since the 1st day of December, one thousand eight hundred and seventy-three, and all acts passed since that date are to have full effect as if passed after the enactment of this revision, and so far as such acts vary from, or conflict with any provision contained in said revision, they are to have effect as subsequent statutes, and as repealing any portion of the revision inconsistent therewith."

Thus, the Act of June 9, 1874, declared the limitation upon or exception from the exemption provision in Section 61 of the Act of 1872 (R. S. Sec. 4536) and removed from the purview of the latter section seamen engaged in the coastwise trade. The Act of June 9, 1874, having been passed later than December 1st, 1873, was not repealed or otherwise affected by the revision of June 22nd, 1874 (R. S. Sec. 5601).

On March 4, 1915, Congress passed an Act entitled:

> "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion, and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea."

Section 12 of this Act contains substantially the same exemption provision found in Section 61 of the Act of June 7, 1872 (R. S. Sec. 4536), with an added provision making the exemption applicable to fishermen employed on fishing vessels. By the last sentence of the section, Section 4536 of the Revised Statutes is expressly repealed.

Counsel for the petitioner contends that this Section 12 is to be deemed to have repealed the former exemption provision (R. S. Sec. 4536) and to have enacted as a new law the exemption provisions as to all seamen whether in coastwise or foreign trade.

Apparently petitioner rests his appeal on an *implied* repeal of the limitation upon the exemption and bases this view upon the repeal of Section 4536 R. S. with a new enactment without an express limitation contained in the language of the new enactment.

Such a view however overlooks the following important considerations.

(a) The original act had no such limitation in its language. The limitation was found by this Court to exist by intention later merely given expression to in the Act of June 9, 1874.

U. S. v. *Grace Lothrop, supra.*

(b) The limitation was not repealed by the Act of March 4, 1915 and remained in force. It is now found in Section 544 U. S. C.

(c) Section 12 of the Act of March 4, 1915 is not *new enactment* but is *re-enactment* and therefore the rule of statutory construction is that it is deemed to be a con-

tinuation of existing law and subject to all other existing law and judicial interpretation of the prior law.

U. S. v. *Bathgate,* 246 U. S. 220.

Petitioner in a roundabout way asserts that the repeal of said Section 4536 and its re-enactment in another Act, with a new title, operated as an implied repeal of the limitation in the Act of June 9, 1874. Three cases are cited in support of this contention: *Burns* v. *Fred L. Davis Co.,* 271 Fed. 439; *Ornstein* v. *Pittsburgh S. S. Co.,* 209 Ill. 202; *Inter-Island Nav. Co.* v. *Byrne,* 239 U. S. 459, 463.

The decision in the *Ornstein* case is of little weight, since the question here involved was not before the Court. The case involved trade on the Great Lakes.

The case of *Burns* v. *Fred L. Davis Co.* (decided by the Circuit Court of Appeals for the First Circuit on February 16, 1921), seems to have expressed the dictum that by the repeal of Section 4536 by Section 12 of the Act of March 4, 1915, "the limitation placed upon the language of that section by the Act of June 9, 1874, has been removed", citing as authority *Inter-Island Nav. Co.* v. *Byrne* (*supra*).

In order to understand the effect of the decision in the *Burns* v. *Davis* case (271 Fed. 439) it must be ascertained what questions were before the Court.

Burns was employed on a vessel sailing between Massachusetts and Canadian Ports. If he was a seaman his wages were exempt as manifestly the coastwise limitation was inapplicable in his case. He claimed wages. The defense was that his wages had been assigned and were payable to his assignee. He recovered a judgment for his wages. Prior to the judgment, an attachment by another claimant was cancelled but the assignee had not released or

cancelled his notice of assignment. Defendant offered to pay the wages but Burns declined insisting upon certain penalties. The appeal was by Burns. He raised three questions:

1. That the Court below had not fixed his status as either seaman or fisherman on a voyage; and therefore did not decide the questions of a right to attach in the State Court.

2. That he was entitled to extra pay and expenses.

3. That he should have costs.

The Court held he was a seaman and that he was entitled to wages as such. The Court further held that he was entitled to the extra pay and costs because the employer withheld wages without legal cause. The Court held the attachment was invalid and did not justify the withholding of the wages.

The discussion of the Federal Statutes and decisions was merely to demonstrate the exemption of a seaman "engaged in making a foreign voyage to obtain a cargo and not on a fishing trip" from attachment of his wages earned upon such voyage.

Burns v. *Davis Co.*, 271 Fed. 439 at p. 444.

The Inter-Island Nav. Co. v. *Byrne* case (decided December 20, 1915), is not an authority for the dictum. That case involved a state of facts in existence prior to the passage of the Act of March 4, 1915. In that case, a garnishee summons was served upon the Navigation Company, the owner of a vessel engaged in the coastwise trade upon which one Kaleika was employed. The company set

up that Kaleika was hired directly by it (not through a shipping commissioner) on the "Clandine", plying only in the inter-island coast trade, and asked a discharge because of the exemption from attachment of seamen's wages by Section 4536, Rev. Stat. The trial court held that the subsequent legislation excluded seamen engaged in such coastwise trade from the exemption, and rendered judgment against both Kaleika and the company. The judgment was affirmed by the Supreme Court of the Territory of Hawaii (22 Hawaii 160), which judgment was affirmed by the Supreme Court of the United States.

At the time of this decision, the original Section 61 of the Act of June 7, 1872, had become Section 4536 of the Revised Statutes and the Act of June 9, 1874 remained unrepealed.

Mr. Justice McReynolds, writing for the Court, said:

> "Certainly, we think, the provisions in the Act of 1872 having direct reference to wages (including those in Sec. 4536, Rev. Stat.), because of their intimate connection with the navigation of vessels, must be considered as applicable thereto and therefore included within the scope of the amendment of 1874."

Clearly, therefore, the decision is to the effect that, both provisions being a part of the Federal Statutes relating to seamen, the Act of June 9, 1874, was to be deemed a limitation upon the exemption contained in Section 4536, rendering that section inapplicable to seamen engaged in the coastwise trade. In other words, the language of Section 4536, sufficiently broad to include all seamen, was limited by the prior Act of June 9, 1874, treated as an amendatory act, so as to exclude a particular class of seamen. Upon

no other theory could the court have rendered a judgment of affirmance.

This brings us to another contention of petitioner:

In the case of *Wilder* v. *Inter-Island Nav. Co.*, 211 U. S. 239, p. 245, this Court stated that the question of inapplicability of Section 4536, because the steamship company was engaged wholly in the coastwise trade, had not been raised in the court below or in the assignments of error or upon the argument. This Court then stated:

> "This removes any question on that subject from the case and renders it unnecessary to decide whether the Act of 1874, c. 259, 18 Stat. 64, had the effect to repeal Section 4536, so far as vessels thus engaged are concerned."

In the last paragraph of the decision in the *Inter-Island Nav. Co.* v. *Byrne* case, referring to the above quotation from the *Wilder* case, wrote as follows:

> "The particular point now presented was reserved in *Wilder* v. *Inter-Island Nav. Co.*, 211 U. S. 239, 245. It has become of less importance since the Act of March 4th, 1915, * * * wherein the provisions of Section 61 of the Act of 1872 were re-enacted."

With reference to this paragraph in the opinion, counsel for petitioner, in his brief, writes:

> "The only meaning we can attribute to the statement that the question 'has become of less importance since the Act of March 4, 1915', is that Congress had answered the question left undecided by the *Wilder* case by removing the exemption provision from the limitation of the Act of June 9, 1874, and

> reenacting it in the new Seaman's Act of March 4, 1915, an act affected by no such limitation. The law having thus been changed, the actual holding in the *Inter-Island Nav. Co.* case was clearly of less importance."

In substance, this contention is to the effect that the Supreme Court, in the paragraph quoted, was asserting that the repeal of Section 4536 and the re-enactment of the provisions of Section 61 of the Act of 1872 which were similar to Section 4536 Rev. Stat. in the Act of March 4, 1915, removed the limitation imposed by the Act of June 9, 1874.

It seems to respondent that the opposite conclusion should obtain. The question reserved in the *Wilder* case was whether the Act of 1874 limited Section 4536 of the Revised Statutes of 1874 in so far as vessels engaged in the coastwise trade were concerned. The language in the *Byrne* case "has become of less importance since the Act of March 4, 1915, * * * wherein the provisions of Section 61 of the Act of 1872 were re-enacted", has been judicially understood to mean that any further argument such as had been made in the *Byrne* case as to the survival of the limitation of the 1874 Act as against Section 4536 of the Revision of 1874 was eliminated by Section 12 of Act of March 4, 1915 which was a re-enactment of the provisions of Section 61 of the Act of 1872, the said provisions of Section 61 of 1872 and the said provisions of Section 4536 being substantially the same.

The decision in the *Inter-Island Nav. Co.* v. *Byrne* case answered the question undecided in the *Wilder* case. The inescapable purport of the affirmance of the judgment in the *Byrne* case is that the Act of 1874 was a limitation

upon the exemption in Section 4536, so long as both provisions remain in the statutes regardless of titles and positions. This conclusion is fortified by two well established rules of construction.

> *First, the re-enactment of a statute or a provision in a statute does not repeal an intermediate Act which qualifies or limits the first Act, but the intermediate Act is deemed to remain in force and to qualify or modify the new Act as it did the original Act. Second, an Act which repeals and simultaneously re-enacts substantially the same statutory provisions is construed, not as a repeal of the original statute, but as an affirmance and continuation thereof.* (Italics ours.)

These rules are stated or recognized in the following authorities: *25 Ruling Case Law,* Sections 186, 187 (Statutes); *59 Corpus Juris,* Sections 495, 528, 529 (Statutes) and cases cited.

The application of these rules conclusively rebuts petitioner's contention that the Supreme Court in the *Byrne* case decided that the simultaneous repeal of Section 4536 and re-enactment of provisions of Section 61 of Act of 1872, which provisions are like those in Section 4536, by Section 12 of the Act of 1915, left the re-enacted section free from the limitation of the Act of 1874. On the contrary, under the rules above stated, the re-enactment of the original Section 61 of the Act of 1872, into Section 4536 of the Revised Statutes, and the simultaneous repeal and re-enactment of the latter section by the Act of 1915, in legal effect was a continuation and affirmance of the original provision limited in its scope by the intermediate act of June 9, 1874 which remained unaffected by the subsequent

repeal and simultaneous re-enactment effected by the Act of 1915.

The respondent's contention for construction of the Act of March 4, 1915, Section 12 as not being a repealer of the limitation of the exemption of Section 4536 (which limitation is contained in the Act of June 9, 1874) is further fortified by such decisions as:

> *United States* v. *Le Bris,* 121 U. S. 278, 280;
> *Sessions* v. *Romadka,* 145 U. S. 29, 42;
> *Taylor* v. *Delancy,* 2 Caine's Cases 142, 148, 149, cited with approval by this Court (110 U. S. 619).

In *United States* v. *Le Bris,* this Court stated in reference to a general revision of the Federal Statutes, that

> "The re-enacted sections are to be given the same meaning they had in the original statute unless a contrary intention is plainly manifested."

A similar rule was stated in *Sessions* v. *Romadka* in these words:

> "Congress having in the Revised Statutes adopted the language used in the Act of 1837, must be considered to have adopted also the construction given by this Court to this sentence and made it a part of the enactment."

And, in *Taylor* v. *Delancy,* the court said

> "These acts are of the description of revised laws, and if susceptible of doubt in their interpretation, resort must be had to the law existing antecedently."

Again

> "My opinion is founded on this proposition, that where the law, antecedently to the revision was settled either by clear expression in the statutes, or adjudications on them, the mere change of phraseology shall not be deemed or construed a change of the law, unless such phraseology evidently purports an intention in the legislature to work a change."

Certainly, in the light of the foregoing rules Congress in enacting the Act of March 4, 1915, Section 12, which is in the same language substantially as Section 61 of the Act of June 7, 1872 (Section 4536 of the Revision of 1874), must be deemed to have known of the decision of this Court in *United States* v. *The Grace Lothrop, supra,* to the effect that

> "Congress never intended that the original Act (Act of June 7, 1872) should apply to vessels engaged in any part of the coasting trade, except that between the Atlantic and Pacific Coasts,"

hence its enactment of the Act of June 9, 1874, *supra,* the language of which Act being in its terms an explicit declaration of such intention. If Congress by Section 12 of the Act of March 4, 1915 desired the exemption to apply indiscriminately to coastwise as well as foreign shipping, it could have and would have so provided either by repealing the limitation contained in the Act of June 9, 1874 or by providing that Section 12 of the Act of March 4, 1915 should apply to coastwise shipping as well as other shipping. This Congress did not do. Apparently its intention was to preserve the exemption with its limitation. In connection with this, it may be remembered that the Act of

March 4, 1915 was before Congress for upwards of three years before its passage. During the course of a debate on the measure before the House of Representatives, Congressman Michael E. Burke of Wisconsin, a member of the Committee on Merchant Marine and Fisheries, discussed the entire bill, his speech taking up 13½ pages in the Congressional Record, and stated (at page 911, Vol. 51, Part 17 of the Congressional Record):

> "*Section 12 of the substitute* corresponds with section 11 of the Senate bill and *is a revision of the present section 4536 of the Revised Statutes.* It provides in substance that the wages of a seaman shall not be subject to attachment, and prevents the sale or assignment of wages by seamen before being earned. No assignment or sale of wages made prior to the accruing thereof shall bind the party making the same excepting such advances and allotments as are authorized by this section. Permission, however, is given by this section for the advancement or assignment of a portion or the whole of the seaman's wages to be made to his wife or minor children. This section protects the seamen from the unscrupulous boarding and lodging house keepers otherwise known as 'crimps'. Part of this section is also applicable to fishermen, who are represented to be in dire need of such protection. It also permits a court by order to apply any part of a seaman's wages to the support of the seaman's wife and minor children. This is new, and is designed for the protection of the seaman's family, and will prove to be a gratifying humane provision." (Italics ours.)

The House substitute was finally passed by both Houses and then signed by the President on March 4, 1915.

Petitioner refers to remarks made in Congress as to making the exemptions apply to seamen generally but this part of the debate related to the question of whether the Act was to apply only to seamen on United States' vessels as originally provided by Senate Bill 136, whereas, it was finally decided to omit the reference to United States' vessels and have it apply to vessels regardless of the country of registry. This is what was meant by the statements culled from 52 Congres. Rec., pp. 4639, 4641 and 4733.

A reading of the entire debate upon this feature of the Act clearly shows the purport of the language employed.

This Court in *Inter-Island* v. *Byrne, supra,* citing the *Grace Lothrop* case with approval, held that the Act of June 9th, 1874 attained the particular end in view, namely,

> "* * * the relief of vessels making relatively short voyages, with frequent opportunities for reaching ports, from burdensome requirements not then deemed essential to the welfare of seamen employed thereon."

In the compilation of the Federal Statutes in 1918 the section which is now Section 544 of the United States Code was carried into the Compilation as Section 8291 because it had not been repealed by Section 12 of the Act of March 4, 1915 (Chap. 153, Sec. 12, 38 Stat. 1169), which is found in the Compilation as Section 8325A.

There is further confirmation by the Act of Congress of June 30, 1926, and by the Act of Congress of May 29, 1928.

The first of said acts created the United States code which includes as above pointed out both Sections 544 and 601 and the latter statute perfected the accuracy of the code and confirmed the retention of both said sections.

A case in point is the *Duggar* case decided by the Court of Appeals of Alabama

Duggar v. *Mobile & Gulf Navigation Co.*, 140 Southern Reporter, 611.

The decision, rendered October 27, 1931, reviewed the entire history of the legislation which culminated in Sections 544 and 601 of United States Code.

The Plaintiff in that suit sought to garnishee the wages paid by the Mobile & Gulf Navigation Co. to one P. M. Tindel, judgment-debtor, said P. M. Tindel being employed by the Navigation Co. as a pilot or mate on one of its vessels or tugs plying on the Alabama River and Mobile River. The Navigation Co. set forth Section 601 as its basis for refusing to honor the execution.

The Court held that Section 544 above mentioned, limited the application of Section 601 to seamen engaged in coast to coast or United States to Foreign Port trade and hence held the garnishment was effective as against the wages of P. M. Tindel whose employment did not fall within the class of seamen engaged in coast to coast or United States to Foreign Port trade.

The following is a quotation from the opinion which cites and sets forth relevant portions of decisions of the United States Supreme Court (*Inter-Island Navigation Co.* v. *Byrne*, 239 U. S. 459, 36 S. Ct. 132, 60 L. Ed. 382; *U. S.* v. *Grace Lothrop*, 95 U. S. 527, 532, 24 L. Ed. 514, 515) supporting the conclusions reached by the Court:

> "Coming to the current state of the law on the subject at bar, we find that Congress on June 30, 1926, adopted an act 'to consolidate, codify and set

forth the general and permanent laws of the U. S. in force December 7, 1925, (44 Stat. 777) said consolidation and codification being known as the U. S. Code, and that the two sections in question, namely, The Act of June 9, 1874, Chap. 260, 18 Statutes at Large p. 64 and the Act of March 4, 1915, Chap. 153, Sec. 12, 38 Statutes at Large, part I, pp. 1164, 1169, were duly included therein and have remained unchanged to the present date, being known and designated in said Code respectively as U. S. C. title 46, Chap. 18 Sec. 544 (46 U. S. C. A. Sec. 544), and U. S. C. title 46 Sec. 601 (46 U. S. C. A. Sec. 601). The inclusion of these two sections in the present consolidation and codification is but further evidence, which should be most convincing of the clear intent and purpose of Congress to continue them in full force and effect; their known judicial construction having been settled, the Congress in adopting the Code, being presumed to have known the judicial construction which had theretofore been placed thereon. The Court should have rendered judgment for plaintiff against the Mobile & Gulf Navigation Co. (garnishee)."

This decision was affirmed by the Supreme Court of Alabama, reported in 140 Southern Reporter, 614.

In view of the present United States Code provisions and the decisions of this Court it appears that Congress never intended to give an exemption to officers or to a seaman employed on short regular trips and certainly never to one who like Findlay, reported to work daily at 4:00 P. M., finished regularly at midnight and who lived on shore.

II.

FINDLAY, A CAPTAIN OF A TUGBOAT, IS A MASTER OF A VESSEL AND NOT A SEAMAN AND AS SUCH IS NOT ENTITLED TO HAVE HIS WAGES EXEMPT FROM GARNISHEE PROCEEDINGS.

This presents an additional reason to support the judgment of the New Jersey Court of Errors and Appeals.

Section 12 of the Act of March 4, 1915 (46 United States Code, Chapter 18, Section 601) is a re-enactment of the provisions of Section 61 of the Act of 1872 (*Inter-Island Nav. Co.* v. *Byrne,* 239 U. S. 459, 463). The exemption given by Section 601 of the United States Code not only does not apply in coastwise trade but is also limited to seamen and not masters or captains of vessels.

As a part of the said Act of 1872 (June 7) Congress enacted Section 65 which provided

> "That to avoid doubt in the construction of this act, every person having the command of any ship belonging to any citizen of the United States shall, within the meaning and for the purposes of this Act, be deemed and taken to be the 'master' of such ship; and that every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'seaman' within the meaning and for the purposes of the Act * * *"

This section was thereafter carried forward in the Revised Statutes as Section 4612 and later with a few verbal changes it was incorporated in the United States Code as Section 713 of title 46, Chapter 18 and now provides

> "In the construction of this chapter, every person having the command of any vessel belonging to any citizen of the United States shall be deemed to be the 'master' thereof; and every person (apprentice excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'seaman'; * * *"

In the case of

Warner v. *Goltra*, 293 U. S. 155,

this Court stated

> "* * * The rule of construction laid down in section 713 must be confined to those sections of the chapter which were contained in the Act of 1872, or in the equivalent provisions of the Revised Statutes, before the Code had rearranged them * * *"

Section 601 of the United States Code, being a re-enactment of the provisions of Section 61 of the Act of June 7, 1872 (R. S. 4536), is governed by Section 713, *supra*, and the meaning of the word "seaman" in the said section by virtue of Section 713 excludes the master or captain of a vessel.

The statute in question (Act of June 7, 1872), its history, its language and its purposes relate to seamen and are limited to the protection of seamen employed by and at the mercy of the master of the vessel. It is perfectly obvious that neither the Act nor the Section (601 of the United States Code) apply to the Captain who is not and never has been a "ward of the admiralty". The ordinary seaman because of his proverbial improvidence was the one whose wages were in need of protection and as pointed out in *Inter-Island Nav. Co.* v. *Byrne, supra,*

> "The fundamental purpose of the Act of 1872 was to afford protection to seamen in respect to their treatment and wages."

The master is not the one to be protected. He can protect himself. The men under him are to be protected. The improvident person cannot be a master (Title 46 U. S. Code Sec. 226).

The distinction is fully pointed out in *Warner* v. *Goltra, supra,* as follows:

> "The case for the respondent reduces itself to this, that by express or implied antithesis the word 'seaman' is used in many statutes to designate a class of mariners exclusive of the master. It is also true, however, that in these same statutes a seaman excludes a stevedore. A goodly number of the statutes where the antithesis is sharpest lay a duty upon the master to be performed for the seamen under him. In law, so framed, there is no room for construction. A goodly number in addition give a remedy to seamen for wages wrongfully withheld, or define terms of payment that agreement may not vary. In respect of dealings of that order, the maritime law by inveterate tradition has made the ordinary seaman a member of a favored class. He is a 'ward of the admiralty', often ignorant and helpless, and so in need of protection, against himself as well as others. The master, on the other hand, is able in most instances to drive a bargain for himself, and then when the bargain is made, to stand upon his rights. Discrimination may thus be rational in respect of remedies for wages. *The Bethulia* (D. C.) 200 F. 876; *The Putnick* (D. C.) 291 F. 902."

In fact the Act of March 4, 1915 by its several sections seems to indicate a sharp antithesis in the duties devolving upon the master to be performed for the men under him.

A few of these sections are indicated:

> Section 3, which obligates the Master to pay to every seaman his wages at the termination of the agreement under which he was shipped or at discharge of such seaman and for delay, without sufficient cause, in paying the seaman, the Master shall pay to the seaman two days' pay for each day of delay.
>
> Section 4, which requires the Master to pay a seaman on demand one-half of his earned wages at every port the ship stops to load or unload cargo.
>
> Section 2, requires division of sailors into at least two watches, firemen into at least three watches, prohibits alternate work by seamen except in certain enumerated emergencies. Failure by the Master to comply entitles the seamen to their discharge from such vessel and payment of earned wages.
>
> Section 9, prohibits flogging and other forms of corporal punishment and any Master who violates same is guilty of a misdemeanor punishable by imprisonment for not less than 3 months nor more than 2 years.

So that, even if Section 12 of the Act of March 4, 1915 were not considered a re-enactment of the provisions of Section 61 of the Act of June 7, 1872 in order to be affected by the rule of construction contained in Section 713 of the

United States Code, *supra,* but assuming that it was a new act, it would nevertheless fall within the rule of *Warner* v. *Goltra, supra,* as last above quoted because of the duties devolving upon the master, by the various sections of the Act of March 4, 1915, for the protection and benefit of the seamen under him. Certainly the several enumerated sections of that Act indicate at least an implied antithesis between the words master and seaman, in fact, so sharp an antithesis as to definitely remove a master from the classification of a seaman for any of the purposes of the Seamen's Act of 1915.

CONCLUSION

The case resolves itself into one of reasonable and rational interpretation of Legislative intent.

Did Congress by any enactment, at any time, intend to give immunity to a captain of a tugboat; earning $200.00 a month; living on shore; receiving his salary by checks sent from the home office of his company; and neither requiring the benefits of an exemption nor being in anywise equitably entitled thereto?

Petitioner seeks a ruling which would be predicated upon the letter instead of the spirit of the law. He seeks also to ignore Section 544 which is as much a part of the law as Section 601. He seeks to assist a judgment-debtor in avoiding the payment of his debt by invoking a narrow construction of the statutes. He shuts his eyes to the real purpose of the legislation.

This Court, however, in construing statutes considers the substance and not the form.

Mugler v. *Kansas,* 123 U. S. 623, 8 Sup. Ct. Rep. 273, 297.

The judgment of the New Jersey Court of Errors and Appeals should be affirmed.

Respectfully submitted,

AARON GORDON,
JOHN W. OCKFORD,
Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 167.—October Term, 1937.

Charles F. Blackton, Petitioner,
vs.
Aaron Gordon.

On Writ of Certiorari to the Court of Errors and Appeals of the State of New Jersey.

[January 31, 1938.]

Mr. Justice Roberts delivered the opinion of the Court.

The issue is whether the master of a vessel is entitled to the benefit of Section 12 of the Act of March 4, 1915,[1] exempting wages of seamen from attachment.

The respondent recovered judgment against one Findlay, the captain of the tug Waverly, a registered vessel of the United States operating in New York Harbor. Under a state statute Findlay's wages due from his employer, the Erie Railroad Company, were attached by the service of an order on the petitioner, superintendent of the marine department of the railroad company. It is not disputed that if Findlay's wages were subject to garnishment the order, and its service upon the petitioner, were regular and lawful. The petitioner asserted that the federal statute exempted Findlay's wages from execution and refused to honor the order. Thereupon action was instituted by respondent against petitioner, pursuant to local statute which in such a case renders the recusant officer liable for the amount of the judgment. On the trial petitioner's motions for a nonsuit and for a directed verdict were denied and judgment went for the respondent. The petitioner successively appealed to the Supreme Court and the Court of Errors and Appeals. The judgment was affirmed.[2] Because of the importance of the question we granted the writ of certiorari.

The words of the statute are: "No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court . . . ." While, within the purview of some of the acts concerning shipping a master is included in the class

[1] c. 153, 38 Stat. 1164, 1169, U. S. C. Tit. 46, § 601.
[2] 117 N. J. L. 40; 118 N. J. L. 159.

designated seamen, in others the expression excludes the master.[3] In this case we must determine whether Congress intended, by Section 12 of the Act of 1915, to extend to a master the exemption of seamen's wages from garnishment. Decision is aided by a consideration of the provision in its original setting. It was first enacted as Section 61 of the Act of June 7, 1872,[4] which authorized the appointment of shipping commissioners to protect merchant seamen and to superintend their shipment and discharge. Scrutiny of the act as a whole leads to the view that in all matters affecting wages seamen were treated as a class which excluded masters; and this conclusion is required by Section 65,[5] which is in part: "That to avoid doubt in the construction of this act, every person having the command of any ship belonging to any citizen of the United States shall, within the meaning and for the purposes of this act, be deemed and taken to be the 'master' of such ship; and that every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'seaman' within the meaning and for the purposes of this act; . . ."

In its present form the pertinent language of Section 12 of the Act of March 4, 1915, is identical with that originally employed in Section 61 of the Act of 1872, which became Section 4536 of the Revised Statutes. Section 12 of the Act of March 4, 1915, reenacted the section, adding a provision to make it applicable to fishermen employed on fishing vessels as well as to seamen. The statute is now Section 601 of Title 46 of the United States Code.

Section 65 of the Act of 1872 became Section 4612 of the Revised Statutes and, with immaterial amendments, now is Section 713 of Title 46 of the United States Code. Various other provisions of the Act of 1872 embodied in the Revised Statutes, either in their original form or as amended by the Act of March 4, 1915, and by the Merchant Marine Act of 1920,[6] now appear, with provisions of other statutes, as sections of Title 46 of the Code. In compiling it the original language of Section 65 of the Act of 1872 "To avoid doubt in the construction of *this act*", was, in Section 713 of Title 46, changed to read: "In the construction of

[3] Warner v. Goltra, 293 U. S. 155, 157, 158.
[4] 17 Stat. 262, 276.
[5] 17 Stat. 277.
[6] c. 250, 41 Stat. 988.

this chapter." The change in phraseology has given rise to the impression that the definitions found in Section 713 apply indifferently to the various statutes affecting merchant shipping.[7] To avoid confusion in determining the applicability of the definitions contained in that section, it is necessary to trace to their origin the substantive sections to which it may be deemed to refer, and to construe them in the light of the evident intent of Congress in the use of the word "seaman" in the original act. Since the pertinent provision of Section 12 of the Act of 1915 here under consideration and the definitions of Section 713 of Title 46 of the Code were commonly derived from the Act of 1872 and have not been materially changed, they must be read in collocation, and when this is done, the intent of Congress to exclude masters from the exemption accorded seamen is plain.[8]

The petitioner contends that Section 61 of the Act of 1872 was modified by the Act of June 9, 1874,[9] whereby the provisions of the Act of 1872 were made inapplicable to vessels in the coastwise trade. The latter Act has been carried into the Code as Section 544 of Title 46, and it is said that the repeal of Section 61 by the Act of March 4, 1915, and the reenactment of the section, slightly altered, did not operate to repeal the Act of 1874. In view of our decision that a master is not within the exemption granted by Section 12 of the Act of 1915 we need not pass upon this question.

The judgment is

Affirmed.

Mr. Justice CARDOZO took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[7] Warner *v.* Goltra, *supra*, p. 162.

[8] Compare Warner *v.* Goltra, *supra*, p. 162.

[9] c. 260, 18 Stat. 64.